



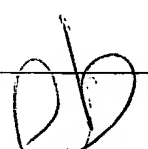
# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,934	08/04/2003	Ralf Niepelt	NIEPELT - 3	4949
25889	7590	10/05/2004	EXAMINER	
WILLIAM COLLARD COLLARD & ROE, P.C. 1077 NORTHERN BOULEVARD ROSLYN, NY 11576			TARAZANO, DONALD LAWRENCE	
			ART UNIT	PAPER NUMBER
			1773	

DATE MAILED: 10/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/633,934	<b>Applicant(s)</b> NIEPELT, RALF	
	<b>Examiner</b> D. Lawrence Tarazano	<b>Art Unit</b> 1773	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/4/03</u> . | 6) <input type="checkbox"/> Other: ____.  |

Art Unit: 1773

## DETAILED ACTION

### *Claim Objections*

1. Claims 1 and 2 are objected to because of the following informalities: In claim 1, "copolmer" is misspelled and claim 2 does not end in a period. Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 2, 5, 11, 13, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 0 120 562 (Hazelton).
4. Hazelton teaches films comprising a blend of olefin elastomers comprising cyclic olefinic monomers such as cycloalkylidene norbornenes (page 2, lines 19+) and a polypropylene material (page 2, lines 33+).
5. These blends can be used to produce films (page 4, lines 11+).

Art Unit: 1773

6. The examiner takes the position that these materials would be sealable and have the claimed tear propagation based on the materials used.

7. Claims 1-4, 6, 10-13 and 15 are rejected under 35 U.S.C. 102(a) as being anticipated by Roussos (EP 1 300 238).

8. They teach a multilayer film comprising blends of plastomers and a cycloolefin copolymer, wherein examples of the cycloolefin include ethylene / norbornene copolymers [0021]. Olefin plastomers are blended with the cycloolefin copolymer, and additional materials such as LLDPE may be added. The multilayer structure is clearly taught [0012]. The structure is multilayer so they meet the "lamination" or "coextrusion" requirements in the claims.

9. The examiner takes the position that the films would have the tear propagation properties based on the materials present.

10. Claims 1-5, 10-13, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Hirose et al. (6,165,573).

Hirose et al. teach cycloolefin copolymer compositions in which the material is blend with ethylene copolymers having a density of 0.87 to 0.94 g/cc (LLDPE, is an ethylene polymers having a density of about 0.915), or propylene polymers (column 28, lines 35+). Ethylene / norbornene copolymers are taught (column 26, lines 59+). These materials have good tearability and sealability, and can be laminated to other layers (column 31, lines 1+ and column 32, lines 32+).

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 1-5 and 10-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berger et al. (2003/0166781).

13. Berger et al. teach ethylene/ norbornene copolymer resins made by metallocene catalysis (example 1). The resin can be used in blend with polyolefins [0081] and used to produce mono or biaxially oriented film. Extrusion or a blown process can produce the films.

14. However, they are silent regarding the nature of the polyolefin, the thickness of the films, and the amount of resins in the blend.

15. In the absence of unexpected results related to the particulars of the resin, it would have been obvious to one having ordinary skill in the art to have used polypropylene materials or LLDPE in the blends taught by Berger et al. Each of these resins is typically used in the production of films and is a type of polyolefin.

16. Regarding the thickness of the films, it would have been obvious to one having ordinary skill in the art to have varied the thickness of the films depending on the end use of the film.

17. Regarding the amounts of resin present, the applicants claim a range of 20 to 80% cycloolefinic resin. This is a very broad range and it would have been obvious to one having

ordinary skill in the art to have gone from the taught blend to such a broad range. This is well within the working skill of the art.

18. Regarding the use of the material in multilayer structures, printing, etc... It would have been obvious to one having ordinary skill in the art to have added additional layers to the structures taught by Berger et al. depending on the desired end use of the film (e.g. barrier layers) etc... Going from a monolayer film to a multilayer film is well within the ordinary skill of the art. The examiner notes that the applicants do not claim any particular material for the other layer. It would have been obvious to one having ordinary skill in the art to have printed on the materials taught by Berger et al. so that the materials packaged inside can be identified. This merely relates to the end use of the material.

19. The applicants claim a balanced tear start and tear propagation properties. The applicants state that the films tear in a strait line without having to notch the films. Unoriented films should have this property based on the makeup of the films. However, additionally a uniaxially oriented film will have this property as orientation in the machine direction makes it easy to tear the film in the transverse direction.

20. Claims 7, 8, 9, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roussos (EP 1 300 238).

21. Roussos teaches that the inner abuse layer comprising a blend of cycloolefin copolymer, plastomers, and LLDPE. The plastomers makes up a large portion of the layer (50-100%), and this layer contributes to the strength of the films. It would have been obvious to one having ordinary skill in the art to have put a larger concentration of polyolefin in the bulk layer to

Art Unit: 1773

improve the strength of the film, it would have been obvious to one having ordinary skill in the art to have made this layer thicker to make the film stronger.

22. It would have been obvious to one having ordinary skill in the art to have printed the films in order to identify the contents of the package.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. Lawrence Tarazano whose telephone number is (571)-272-1515. The examiner can normally be reached on 8:30 to 6:00 (off every other Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Deborah Jones can be reached on (571)-272-1535. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

D. Lawrence Tarazano  
Primary Examiner  
Art Unit 1773



dlt